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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/032,442      | 12/21/2001  | Kenneth J. Muderlak  | 8026-1036           | 6103             |

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EXAMINER

KEASEL, ERIC S

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

3754

DATE MAILED: 06/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                      |   |  |
|------------------------------|--------------------------------------|---|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/032,442 | <b>Applicant(s)</b><br>MUDERLAK, KENNETH J. |  |
|                              | <b>Examiner</b><br>Eric Keasel       | <b>Art Unit</b><br>3754                     |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 28-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 28-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4/4/2005.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 28–33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muderlak et al. (WO 97/13086) in view of Filliung, Jr. (US Patent Number 2,552,625).

Muderlak et al. disclose all the limitations regarding the enclosure and mounting structure including an enclosure (52), first (74) and second (80) bracket halves projecting from the enclosure, substantially enclosing and rigidly engaging a bushing (44) and a hexagonal nut (46) securing the flush lever to the sanitary fixture; fasteners (84) for securing the first and second bracket halves to the enclosure, and a power source (104) for the electromechanical actuator; and wherein opposing faces of the first and second bracket halves comprise a complementary topography to the bushing and nut (compare Figs. 6 and 7 of Muderlak et al. to Figs. 10 and 11 of the present application). Re claims 30 and 33, the flange (76) of the enclosure extends past the first bracket half to limit the rotation of the enclosure of the drive mechanism relative to the sanitary fixture (compare Figs. 6 and 7 of Muderlak et al. to Figs. 10 and 11 of the present application). Muderlak et al. do not disclose an actuator and motor mounted to a movable plate within the enclosure. Filliung, Jr. discloses a similarly mounted actuator for flush valve with a motor (24, 27) and actuator (i.e. gears (30, 31) and/or cam (34) that are mounted on a movable (i.e. capable of being moved) plate (20 and/or 21). It would have been obvious to one having

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ordinary skill in the art at the time the invention was made to have used the motor, actuator, and movable plate of Filliung, Jr. with the device of Muderlak et al. in order to actuate the valve and provide a motor frame that also serves as a journal for the actuating gears and cam as taught by Filliung, Jr.

3. Claims 28-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muderlak et al. (WO 97/13086) in view of Wilson et al. (US Patent Number 6,643,853).

Muderlak et al. disclose all the limitations regarding the enclosure and mounting structure including an enclosure (52), first (74) and second (80) bracket halves projecting from the enclosure, substantially enclosing and rigidly engaging a bushing (44) and a hexagonal nut (46) securing the flush lever to the sanitary fixture; fasteners (84) for securing the first and second bracket halves to the enclosure, and a power source (104) for the electromechanical actuator; and wherein opposing faces of the first and second bracket halves comprise a complementary topography to the bushing and nut (compare Figs. 6 and 7 of Muderlak et al. to Figs. 10 and 11 of the present application). Re claims 30 and 33, the flange (76) of the enclosure extends past the first bracket half to limit the rotation of the enclosure of the drive mechanism relative to the sanitary fixture (compare Figs. 6 and 7 of Muderlak et al. to Figs. 10 and 11 of the present application). Muderlak et al. do not disclose an actuator and motor mounted to a movable plate within the enclosure. Wilson et al. disclose a similarly mounted actuator for a flush valve with a motor (50) and actuator (54, 56) mounted to a movable plate (46) that are located within an enclosure (26). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used the motor, actuator, and movable plate of Wilson et al. with the device of Muderlak et al. in order to actuate the flush valve as taught by Wilson et al.

4. Claims 28-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson et al. ('853) in view of Muderlak et al. ('086).

Wilson et al. disclose an actuator for a flush valve with a motor (50) and actuator (54, 56) mounted to a movable plate (46) that are located within an enclosure (26). Wilson et al. fail to disclose the mounting structure of the bracket halves, etc. Muderlak et al. disclose a similar drive mechanism for a flush lever of a sanitary fixture comprising first (74) and second (80) bracket halves projecting from the enclosure, substantially enclosing and rigidly engaging a bushing (44) and a hexagonal nut (46) securing the flush lever to the sanitary fixture; fasteners (84) for securing the first and second bracket halves to the enclosure, and a power source (104) for the electromechanical actuator; and wherein opposing faces of the first and second bracket halves comprise a complementary topography to the bushing and nut (compare Figs. 6 and 7 of Muderlak et al. to Figs. 10 and 11 of the present application). Re claims 30 and 33, the flange (76) of the enclosure extends past the first bracket half to limit the rotation of the enclosure of the drive mechanism relative to the sanitary fixture (compare Figs. 6 and 7 of Muderlak et al. to Figs. 10 and 11 of the present application). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used the mounting hardware of Muderlak et al. with the device of Wilson et al. in order to reduce the amount of rotation of the enclosure as taught by Muderlak et al.

5. Claims 28-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Filliung, Jr. ('625) in view of Muderlak et al. ('086).

Filliung, Jr. discloses an actuator for flush valve with a motor (24, 27) and actuator (i.e. gears (30, 31) and/or cam (34) that are mounted on a movable (i.e. capable of being moved) plate (20 and/or 21). Filliung, Jr. fails to disclose the mounting structure of the bracket halves, etc. Muderlak et al. disclose a similar drive mechanism for a flush lever of a sanitary fixture comprising first (74) and second (80) bracket halves projecting from the enclosure, substantially enclosing and rigidly engaging a bushing (44) and a hexagonal nut (46) securing the flush lever to the sanitary fixture; fasteners (84) for securing the first and second bracket halves to the enclosure, and a power source (104) for the electromechanical actuator; and wherein opposing faces of the first and second bracket halves comprise a complementary topography to the bushing and nut (compare Figs. 6 and 7 of Muderlak et al. to Figs. 10 and 11 of the present application). Re claims 30 and 33, the flange (76) of the enclosure extends past the first bracket half to limit the rotation of the enclosure of the drive mechanism relative to the sanitary fixture (compare Figs. 6 and 7 of Muderlak et al. to Figs. 10 and 11 of the present application). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used the mounting hardware of Muderlak et al. with the device of Filliung, Jr. in order to reduce the amount of rotation of the enclosure as taught by Muderlak et al.

### *Response to Arguments*

6. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

*Conclusion*

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Keasel whose telephone number is (571) 272-4929. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 13 JUN 2005  
Eric Keasel  
Primary Examiner  
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